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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

NO._____

WAYNE C. LA VELLE, Petitioner

v

WORKERS' COMPENSATION APPEALS BOARD,
STATE OF CALIFORNIA,
TRANS WORLD AIRLINES,
LIBERTY MUTUAL INSURANCE CO.ET AL.
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FOUR

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April 20, 1981

QUESTION PRESENTED

DOES DUE PROCESS OF LAW REQUIRE A WORKERS' COMPENSATION APPEALS BOARD JUDGE TO APPOINT AN ATTORNEY TO REPRESENT AN APPLICANT APPEARING WITHOUT AN ATTORNEY, WHEN IT BECOMES APPARENT DURING THE TRIAL THAT THE APPLICANT IS INCOMPETENT TO REPRESENT HIMSELF?

PARTIES

All parties to this proceeding that are not set forth in the caption:

International Association of Machinists and Aerospace Workers Local 1111, District 142 of the Int'l. Association of Machinists.

Hartford Accident and Indemnity Company,

Respondents

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OF SPECIAL NOTE: The complete transcript of Record has been lodged with the Clerk of U.S. Supreme Court.

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

WAYNE C. LAVELLE, petitioner herein respectfully prays that a Writ of Certiorari be issued to review the decision of the Court of Appeal, State of California, First Appellate District, Division Four, denying Writ of Review, filed on December 12, 1980, and affirming the Findings and Award of the Workers' Compensation Appeals Board, State of California, permanently

terminating the applicants rights to permanent disability and future medical treatment. On January 21, 1981, the Supreme Court of California denied applicant's petition for hearing.

OPINION BELOW

The decision of the Court of Appeal of the State of California, First Appellate District, Division Four, on case NO. 1 Civil 49089, was entered December 12, 1980, denying Petition for Writ of Review and thus affirming the State of California Workers' Compensation Appeals Board Findings and Award, dated June 28, 1979. No opinion of the Court of Appeal was issued, but the denial for Writ of Review appears in the Appendix A, herein. Thereafter, on January 21, 1981, the Supreme Court of California denied a petition for hearing. A copy of the California Supreme Court's order denying hearing also appears in the Appendix B, herein.

JURISDICTION

Petitioner's request for a hearing before the Supreme Court of California was denied on January 21, 1981. No application has been made for an extension of time to file this petition. Jurisdiction of this Court is invoked under 28 U.S.C. & 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment, Section 1, *** (N) or shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

CALIFORNIA CONSTITUTIONAL PROVISIONS INVOLVED

California Constitution, Article 1, section 13; the Constitutional Provisions are reprinted in Appendix C.

STATEMENT OF FACTS AND PROCEEDING BELOW

This is one of a series of cases which commenced with the filing of an application on November 10, 1971, in connection with an accident occurring on August 4, 1970, to the applicant's right knee while applicant was employed as a rampserviceman by Trans World Airlines.

Subsequent thereto as this litigation progressed, the applicant had other accidents and filed during the course of this litigation 12 applications, i.e., eleven additional ones. In addition to the present case at bar, 1 CIVIL NO. 49089, or WCAB NO. 75 LA 394 945, concerning an injury to the back, the following cases were requested to be consolidated by the trial judge so that all the cases could be tried at one time:

CASE NO.	DATE OF INJURY	PART OF BODY
71 LA 371 256	Aug. 4, 1970	right knee & depression neurosis
71 LA 370 927	Jan. 22, 1971	right knee
73 LA 380 934	Oct. 3, 1972	right knee
73 LA 380 935	Dec. 13, 1972	right knee
73 LA 380 936	Feb. 12, 1973	right knee
74 LA 387 156	Jan. 26, 1974	emotional, specific
74 LA 392 377	Aug. 4, 1970 Oct. 25, 1974	emotional, cumulative trauma & continuing
74 LA 392 422	Mar. 13, 1974	hands--chemical dermatitis
74 LA 391 394	May 4, 1974	hand--crushing injury
(Present case) 75 LA 394 945	Dec. 31, 1974	back
76 LA 403 651	Feb. 18, 1976	lungs
76 ING 38 740	Jul. 13, 1976	internal & psychological trauma

On December 31, 1974, I sustained an injury to my back. The Workers' Compensation Appeals Board held hearings on December 13, 1976 and six other dates up to July 21, 1978.

Before the first hearing began, I suffered from severe mental illness. The attorney I had to represent me in the proceeding, Mr. Mathews, and I, lost the client/lawyer relationship. This loss of reasonable understanding was due mainly to the fact that I was so psychologically ill that I could not comprehend how Mr. Mathews was attempting to help me.

Then, while I was still in the hospital for treatment concerning my back injury, I was introduced to the firm of Mr. Gordon. Mr. Gordon tried to understand my complex cases which included multi-claims in psychological and psychological reaction to each of my ten physical injuries. After attorney Gordon sent me to Dr. Martin Blinder, M.D. a psychiatrist, I became impatient while suffering from a diagnosis of manic depression illness. I was very paranoid and thought that my attorney was collaborating with the defense attorneys of Rose, Klein, and Marias, who represented the International Association

of Machinists Union, to delay my case and stop my benefits.

Consequently, in a fit of rage, I went to the office of Mr. Gordon and belligerently yelled at his legal staff and clients. Needless to say, our client/lawyer relationship ceased to exist. Mr. Gordon gave me all the legal files and wished me luck.

Many times before the start of the trial I tried to get an attorney. In each and every encounter, I was refused. First, because I was so sick that I could not make any sense of the problems of the case. Second, many of the attorneys stated they just did not take on cases when other attorneys had been involved. Thirdly, when I would tell the new prospective attorney that I was mentally ill, the reaction I got was that maybe all of my problems stemmed from my mental illness, and none of the physical injuries, including my back were in fact real. I started to feel really insane, until my psychiatrist told me that when I was hospitalized for my back and

knee operation, I was not insane.

This I attempted to explain to the judge of the Workers' Compensation Appeals Board. I told the judge the above mentioned information, but all he could say was off the record that he could not appoint me an attorney. He did say he could give me time to get an attorney. If the Court will notice, the judge set each date for hearings six months apart in order to obtain new counsel. Even with the added time, no attorney could be found to take my cases. Then on February 18, 1976, I sustained a new injury, and an attorney named Mr. Miller agreed to take on just the one case. Mr. Miller, after three trial dates, requested to be dismissed from representing me because the client/lawyer relationship broke down.

Through the trial I asked the judge for an attorney, and pleaded that I was incompetent. Yet, the judge apparently not trained in psychological observation failed to evaluate my incompetence. On page 9, of

TR. 12/19/77, line 1, the judge tells me in his 18 years on the bench he has never had anyone come forward and claim they were incompetent as I did. Still, the judge failed to stop the trial or appoint an attorney to represent me.

Many other incidents occured displaying my incompetence before the court and the other six attorneys at the proceedings. (See section on mental capacity, infra. p. 33.)

As the trials continued, I found it more and more difficult to concentrate on what I was supposed to do in the court room. I became confused to the point of upsetting the judge. He would sarcastically remark that I was an attorney and I was taking up too much of the valuable court's time. I was very intimidated by the Judge. I was unsuccessful in presenting any material that I felt was pertinent to the case. I plainly had no advocate to fight my good fight of faith and legal mores. Finally, the case hearings came to an end with me presenting no M.D.'s medical

report on my permanent back disability and the need for further medical treatment, although I had been examined, treated and diagnosed as having need of further medical treatment and as having a permanent back disability.

I wasn't afforded the opportunity to cross exam Dr. Cowan as to his report of 7/ 7/77, because Dr. Cowan did not come to court, and I had no lawyer. Defendants submitted the medical report of their Dr. Cowan, but he did not testify, and thus I was denied the opportunity to cross examine him. If I'd had an attorney representing me, he'd know how to handle this.

I could have provided in detail testimony from my treating psychiatrist of my complete mental state and that I was not able to competently represent myself.

However, on June 28, 1979, Judge Fluharty made his decision denying me permanent disability and future medical treatment. A copy of this Finding and Awards is in Appendix D.

On the same day the judge issued his opinion on the Findings and Award of Case No. 75 LA 394 945; this opinion appears in Appendix E.

FEDERAL QUESTION BEING RAISED BELOW

The Federal question sought to be reviewed was raised in the hearing by oral presentation and from the content of the complete transcript depicting that I was not competent to represent myself, and unable to obtain an attorney to represent me. First the transcript of record in TR. 12/13/76 and TR. 12/14/76 presents so much confusion that even the judge and defense attorney at times did not understand what was going on. I, being mentally disturbed, was constantly told by the judge that if I had an attorney, none of the trouble would have started. (pps. 31,37,38,39,40,42,45 infra, parts of the transcript that document this paragraph and petition.)

Secondly, if I had had only one case to present, I should have had an attorney; all the more since I had twelve cases to present. When

I told the Judge I felt incompetent. TR 12/19/77, p. 9, lines 1-2, he said:

> "I don't believe I ever had a litigant come before me yet that claimed he was incompetent."

Thirdly, when I complained of a lack of due process, Judge Fluharty said, on page 42 of TR 12/5/77, lines 21-26, that I was getting my due process because of how much money the State of California was spending each day on my case.

Fourthly, the due process question is raised again in TR 12/19/77, p. 82, lines 22-26, specifically at issue here is my non waiver of my right to counsel. The judge told me that I was allowed until 4:45 p.m. to complete my case. Then he said that the Supreme Court has now found that going ahead by myself, if I want to, is not denying due process. What the judge failed to explain is that the applicant must intelligently and knowingly waive his rights to an attorney. There is nothing in the record showing I was offered or that I declined counsel in the trial.

Waiver from a silent record is considered impermissible. The record must show, or there must be an allegation and evidence which show that I was offered counsel but intelligently and understandingly rejected the offer. Anything less is not a waiver.

Fifthly, the Judge commits further reversible error when in his Findings and Award he did not consider the psychological facts in the injury even though he had earlier said that there is a continuous emotional trauma even five years after the injury. (See TR. 12/19/77, p. 13, lines 19-23)

Lastly, the federal question was pleaded on page 5, in my petition to the Court of Appeal, State of California, First Appellate District, Division Four, for Writ of Review as follows:

> "Unless the Findings and Award action taken by the Board is annulled, petitioner will be deprived of his property without due process of the law in violation of section 1, of the Fourteenth Amendment to the Constitution of the United States, and petitioner claims the benefit and protection. Respondent Board has deprived petitioner of his constitutional

right by failing to review the entire record and act on material issues involved in the case; thus exceeding it's powers."

REASONS FOR GRANTING THE WRIT

I.

THIS CASE PRESENTS A CONSTITUTIONAL CLAIM WHICH IS ALMOST IDENTICAL TO THE ISSUE WHICH WAS DECIDED BEFORE THIS COURT IN GIDEON V WAINWRIGHT EXCEPT THIS IS A CIVIL MATTER.

In Gideon v Wainwright an indigent defendant claimed his right to have court-appointed counsel to represent him at his trial. In the present case, (though it is a civil case) an incompetent applicant is alleging that he was denied his constitutionally guaranteed right to be represented by court-appointed counsel at the trial stage of the Workers' Compensation proceedings.

The Court also pointed to our adversary system of criminal justice (which in civil matters is also an adversary system) that any person hailed into court, who is too poor to hire a lawyer (or in the present case not able

to obtain an attorney), cannot be assured a fair trial unless counsel is provided for him.

This case gives the court the opportunity to decide on the social value of giving the courts the power to appoint attorneys to persons in civil cases, and including administrative law cases, Workers' Compensation cases, where the plaintiff, applicant, claimant be incompetent or the defendant can not afford nor can he find an attorney to represent himself. In the interest of justice, the court would have the power to appoint an attorney when it is apparent that the individual is not competent to represent, nor does not want to represent himself, and explicitly tells the judge he wants an attorney. (TR. 5/31/77, p. 21, lines 14-16) In contrast to the criminal justice system in our country, a person charged with a crime against another person or property is guaranteed complete due process of the law through the 14th, 5th and 6th Amendments to the Constitution of the United States. These same protected rights should

also include the private citizen who is not charged with any criminal violation of the law against person or property. If the outcome of any case involves a potential denial of rights to property, construed as medical care or permanent disability indemnity, or if it in any way may infringe upon the person's right to life, liberty and the pursuit of happiness, then our society should afford the parties the same legal protection in civil cases as it does in criminal cases.

When my case first began, I hired an attorney to represent me before compensation proceedings. Then, upon injuring my back, the relationship between my attorney, Mr. Mathews and myself, deteriorated. The breakdown in communication took place first, because I was in so much pain from the back injury I was impatient to wait for a trial date. Second, I was suffering from a mental disease which at the time was extremely acute causing me to have delusions.

The next attorney was Mr. Gordon, who

substituted in for Mr. Mathews. His firm worked very hard to get me medical help and to get my case brought to trial. But my mental illness became worse than it was with Mr. Mathews, and the relationship between the attorney and myself ultimately grew non-existent. Mr. Gordon handed over to me all the records involved in my case. I attempted to find a new attorney, but each time a new prospect learned that I had psychological problems and that I had already fired two lawyers, I would be refused.

Finally, on December 13, 1976, the trial began with me being forced to represent myself. I did manage to obtain an attorney on the new industrial injury, but Mr. Miller would not take on the other eleven cases. (He was allowed to walk out on the case over my objection, as shown later herein).

This Court should, therefore, grant a Writ of Certiorari herein in order to resolve the important federal constitutional question which this case presents and which

this court did not have an opportunity to decide on the merits in the matter of Gideon v Wainwright.

II.

AN APPLICANT NOT COMPETENT TO REPRESENT HIMSELF IS ENTITLED TO COURT COUNSEL UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN A WORKERS' COMPENSATION PROCEEDING.

This Court has required that two steps be met in determining whether a private interest is protected by the procedural due process safeguards of the Fourteenth Amendment. First, the private interest must be shown to be a fundamental right.

Secondly, where due process must be afforded because an interest is protected by the Fourteenth Amendment, it is necessary to determine "what process is due" in the particular. SMITH v ORGANIZATION OF FOSTER FAMILIES, 431 U.S. 816, (1977) at 877.

A. The Right to Compensation Benefits of an Injured Employee has been made Fundamental

through the Police Power Enacting the Workers' Compensation Act.

My right to permanent disability and future medical treatment for an industrial injury sustained while being employed by Trans World Airlines on December 31, 1974 and again on February 6, 1975, was clearly established in the year 1923. In California Compensation case, Harris v Industrial Accident Commission of the State of California, San Francisco Bridge Company and Federal Mutual Insurance Company, THESE RIGHTS were stated:

> "That the legislature intended that the Workmens' Compensation Act as to any part or portion thereof which it should come within the province of the court to interpret should be liberally construed by such courts for the purpose of extending the benefits of the act for the protection of the persons injured in the course of their employment by section 69a of said act, which so expressly provides."

B. The Right to Court Appointed Counsel is a "Process that is Due."

To determine the procedural safefuard due a protectable liberty interest, this Court has

required a balancing of three factors:

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Parham v. J.R., 99 S.Ct. at 2502; Matthews v. Eldridge, 424 U.S. 319, 335 (1976).

I believe that this balancing test requires that an applicant not competent to represent himself be given the right to court appointed counsel in the Workers' Compensation proceedings.

1. The Right to Permanent Disability and Future Medical Treatment Is The Private Interest That Will Be Affected By Non-action Involving An Incompetent Applicant, Before Compensation Proceedings.

The right to permanent disability and future medical treatment is the private interest affected by the compensation board's decision. As a matter of substance, I have been deprived of my possible cure and my healing

period. This right to cure or relieve the applicant from any aspects of the industrial injury is fundamental to our society and the Workers' Compensation System.

2. The Risk of Erroneous Deprivation Of The Right To Permanent Disability And Future Medical Treatment Is Inherent Within The Procedure Presently Used - Court Appointed Counsel, As An Additional Procedural Safeguard, Will Minimize The Risk.

I contend that the risk of erroneous deprivation of the right to permanent disability and future medical treatment is inherent under a procedural scheme that refuses to appoint counsel to an applicant not competent to represent himself in the compensation proceedings. I further contend that the failure to appoint counsel did not only present a risk, but actually caused erroneous deprivation in this case.

III

THE FOLLOWING ACTIONS MIGHT HAVE CHANGED THE OUTCOME IF I WOULD HAVE HAD AN ATTORNEY APPOINTED TO REPRESENT ME.

1. First: The defendant submitted a report from a Doctor Cowan, who examined me once at defendant's request. That report said I was not permanently disabled. Dr. Cowan did not testify. If I would have had an attorney, I would have had him subpoena Dr. Cowan and cross examine him as to his findings that I had no permanent disability relating to my back.
2. Secondly: If I had an attorney, he would have cross-examined Dr. Cowan as to his findings that I had no permanent psychological disability to my back injury.
3. Thirdly: Defendant submitted a report by Dr. Goodley who was my doctor originally, but somehow mysteriously became defendant's doctor. Dr. Goodley did not testify. If I had had an attorney

he would have subpoenaed and cross-examined him as to his findings of no aggravation of the industrial injury at his examination of March 7, 1975.

4. Fourthly: Dr. Marvin Eisenberg examined, treated and had me under his observation and care from January 1974 until the present. He testified in a Social Security Disability Administrative Hearing on January 4, 1978, that I was permanently psychologically disabled. I did not have him testify at the Workers' Compensation Appeals Board Hearing. Why not? I do not know why not. I wasn't thinking clearly, but if I'd had an attorney, he would have had Dr. Eisenberg testify at the WCAB Hearing. He further would have testified, in detail, to my medical state just as he did at the Social Security Hearing. (See pp. 57-58 herein)
5. Fifthly: Dr's. Lambross, Lemoncheck and Goodley examined me at defendant's request. Their reports are in evidence which show

permanent disability to my back. If I had had an attorney, he would have subpoenaed Dr. Martin Blinder to testify regarding permanent disability to my back.

6. Sixthly: If I had had my own attorney, he would have had me examined by doctors for my case. These medical reports would have been entered to show the permanent disability concerning my back injury, and the future medical treatment needed to cure or relieve my pain.
7. Seventhly: By having an attorney, I would have been able to give a complete testimony of the issues and facts directly connected to the back case which were not brought forth by the judge who was questioning me.

IV

BECAUSE I DIDN'T HAVE AN ATTORNEY THE FOLLOWING EVENTS TOOK PLACE SHOWING MY INCOMPETENCE TO REPRESENT MYSELF:

1. I now have a permanent back disability, but at the trial I did ~~not~~ provide any medical

reports from othropedic doctors evidencing my permanent disability and the need for future medical treatment. (Now, however, because of recent medical reports and evaluation of my back injury, Dr. Hunt of Torrance has established that there is permanent disability and a need for further treatment. Date of report was March 1981.)

2. The judge did not conduct a full inquiry as to why I had no attorney, and why I couldn't find a lawyer to take all 12 cases. (They would get scared when each lawyer saw the complexness of the so many cases by one applicant)
3. I brought serious and willful misconduct charges against Trans World Airlines for firing me when I could not do the work because of my injury. If I had had an attorney, the charges would not have been dismissed.
4. I would not have been left alone in the court, as seen especially through the trial

court's dismissal of Mr. Miller, the attorney I had for WCAB. Case 76 LA 403 651.

5. I would not have had to rely on the judge to prove my case for me, but I would have had my own advocate in the proceedings.
6. Because of the dispute between attorney and myself, Doctor Martin Blinder, M.D., psychiatrist, did not testify at the hearing. He had sent a letter to Mr. Gordon telling of his want to be an expert witness in my complicated psychological case.
7. The truth of why I was representing myself was not shown; but because there was no attorney, the court went off the record and prevented my non waiver of counsel to be admitted into the record. (I tried desperately to get a lawyer but couldn't)
8. The court BY NOT giving me a test of competence to represent myself, denied me my fundamental right to a fair trial. (See the Faretta v California 422 U.S. 806, 95 Sup. Ct. 2525, 45 L.Ed. 2d 562 (6/30/75)

9. By not having an attorney, I failed in developing questions to get information I needed to prove my disability from witnesses Fred Marrow, Wally Warfield, Vern Cutler, Erwin Kaufman, Clarence Johnson, etc. to show my back injury and psychological injury were related.

10. Again, because I did not have an attorney representing me, I failed to bring out that TWA employees, Chet Spears, Supervisor for Fleetservice and Jack Williams, Industrial Relations Regional Manager, and TWA's Dr. Reardon, did not respond to subpoenas to come to the compensation proceedings. The medical testimony of Dr. Reardon was especially important because his most recent medical examination evidenced my inability to be a good candidate for my job at TWA. To show my back injury aggravated my psychological injury, on page 17, of TR. 12/5/77, starting with line 7, I had issued a subpoena in June of 1977

to a Dr. Reardon of TWA who was stationed in Los Angeles. The company had him sent up to San Francisco, out of range of the power of what I thoughtthe mileage limit of a subpoena was. I told the judge that I needed the doctor as a witness so I could take evidence. The Judge said he did not know about any limit to a subpoena, that he was not on the bench to answer questions. My inability to cope with the situation at that time is obvious.

V.

I AT NO TIME WAIVED MY RIGHT TO HAVE AN ATTORNEY APPOINTED TO REPRESENT ME. I AT NO TIME INDICATED THAT I DID NOT WANT AN ATTORNEY, BUT REPEATEDLY STATED THAT I DID WANT ONE.

See TR. 12/13/76 p.14, line 18; TR. 12/14/76 p.100, line 18; TR. 5/31/77 p.2 lines 14-26; TR. 12/5/77 p.3, lines 4-13, TR. 12/19/77 p.8, lines 11-26, p.9, lines 1-5; pps.31,37, 38,39,40,42,45 infra.

A defendant has a constitutional right

to represent himself. However, he must "knowingly and intelligently waive benefits of counsel, and as such must be made aware of the dangers and disadvantages of self-representation, which must be established on the record. (FARETTA v CALIFORNIA, 422 U.S. 806, 95 Sup. Ct. 2525, 45 L.Ed. 2d 562 6/30/75).

The Faretta case stated that a person should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open." The record in my case does not show that I freely exercised my free will in representing myself. On the contrary it shows that I was forced to represent myself because I could not find an attorney, and the court would not appoint a lawyer for me. For instance; in the transcript of the record dated December 13, 1976, the following appears:

TR. p.2, the court asked me if I was in pro per. I answered yes, but--then the record fails to state how I was forced to represent myself, and I was in need of counsel. The record then shows that the court on line 10, proceeded directly into the start of the case rather than give me some inquire about my knowledge of waiver of rights intelligently. The court says I will start with the1971 cases. On line 18, the court asked if I had an attorney for the two cases mentioned. I was in pro per. I was in pro per for the eleven cases until case 76 LA 403 651, which was represented by Mr. Miller. (He would not represent me on any other case)

On page 5, of this hearing, difficulty developed as to consolidation of the emotional cases and separation of the physical cases. I did not understand. I stated my feelings, but the judge scared me so that if I disagreed with him I thought it would go badly for me. The judge entered into a discussion with Mr. Harris, an attorney for Liberty Mutual Insurance, who argued that the emotional should

be combined. On page 6, line 22, I told the judge that I agreed with both of them. The judge snapped at me, and I was frightened into going along with the judge's decision. Complete chaos broke out to procedural issues; I was lost. Then on page 14, line 17, I told the judge I didn't understand. The Court said in line 18:

> "I know you don't and that is the reason I have been telling you that you should have an attorney. You come in here and don't understand anything and wonder why it is taking so many hours of the Courts time just to get these straightened out in order to proceed."

On page 17, line 21 of this TR. 12/13/76, Mr. Miller came forward to represent me in case 76 LA 403 651. The case went smoothly, and then confusion started. But by page 26, line 9, when I was in another case where Mr. Miller was not representing me, the court told me I was to have disability information if I wanted to try my own case. (I did not have it). "You are not supposed to have the Court hunt it up for you," I was instructed.

On page 28, line 5 of this TR. 12/13/76 the questions were relating to the applicant's intelligence. "Mr. LaVelle, do you have medical reports on your left hand?" Answer: Just the one's that the defendant is offering. The Court: "And you are relying on the defendant; do you think that is smart?" Page 33, line 9, the court stopped me from proceeding to present my case in a narrative form. The judge says it will have to be a question and answer form. I was not ready to ask myself questions to present my case. The sequence of events which took place in connection to my back injuries, I feared, would not be investigated. Pg. 34, shows how the judge took over as questionnier for the applicant. This prevented me from giving a complete testimony because the judge really did not know what questions to ask that would have advocated me. I now realize of course that the judge can't be an advocate and still be neutral in deciding the case. On page 58, line 5, it shows that the testimony was becoming confusing to the judge and he

wanted to go off the record. Line 9, he went off the record; line 11 he went back on the record. Then in line 19 off, line 20 on.

MENTAL CAPACITY

McNeal v Culver, 365 U.S. 109, 81 Sup.Ct. 413, 5 L. Ed. 2d 445 (1/23/61). In the McNeal case the petitioner suffered from a mental illness. The defendant attempted to put into evidence a doctor's statement that verified his claim, but the judge said it was inadmissible:

> "These facts tend strongly to show that petitioner's ignorance, coupled with his mental illness and complete unfamiliarity with the law and court procedures, and the scant, if any, help he received from the court, made the trial fundamentally unfair.
>
> In addition to this showing of petitioner's lack of education and mental illness and his consequent inability to defent himself, the record at least implicitly disclosures a number of highly complex legal questions, beyond the comprehension of almost any layman. (365 U.S. 114)
>
> The record contains facts which would have instantly suggested to counsel that petitioner might have a good insanity defense. It is too much to expect this mentally ill petitioner effectively to raise and establish the defense of his own insanity, and, so far as this record shows, neither the prosecutor nor the trial court took any

notice of the matter.

> For the totality of the reasons reviewed, due process of law required that petitioner have the assistance of counsel at the trial of this case, if the facts and circumstances alleged in his habeas corpus petition are true. On the present record it is not possible to determine their truth. But the allegations themselves made it incumbent on the Florida court to grant petitioner a hearing and to determine what the facts are." (365 U.S. 116-17)

Similarly, my case before the Court has displayed the same characteristics. For instance, in the transcript of record, dated December 14, 1976, page 1, the Court asks me if I'm mad at any body. This is line 25. On page two of the transcript, the court wants to know what my problem is. Again on line 21 of page two, Mr. Harris, attorney for Liberty Mutual Insurance Company, states that I should not be allowed to proceed.

On page three, lines 1-9, I explain that each time I go for a psychological evaluation the doctors take me back to the events that occured in this back injury case where I attempted to kill myself as a direct reaction to the back injury and subsequent firing of me

by the defendant, Trans World Airlines. I then told the court that if the defendants were ready to settle, I was ready. The Court in line 9, tells me that I'm not running the court, but he is.

Then in line 25, the court says a recent decision said there must be germain reports. Yet, as the Court will note, the Judge set up trial at six month intervals which made the reports all ready introduced, not germain. It is apparent that the Judge set up the long period between trial dates in hopes that I would obtain an attorney. To which I tried very hard, but was ultimately unsuccessful.

On page 7, of this same transcript, line 16, the Court tells me that if I want to be a lawyer, then I must have upstanding honesty. Here, he was indicating doubt that I was being honest with him.

The mental incompetency was very apparent when the defense attorney, Mr. Barry Evans, questioned me in great detail as to the effects of being taken from work to the psychiatric

hospital in January 22, 1974. I was on the stand, as shown on page 71 of the TR. 12/14/76 when I forgot where I was and started to mumble my response to questions. I would mentally flash in and out of the court room and had difficulty in following the single events which were brought up. From the cross examination by Mr. Evans, on page 98, the judge said on line 15, that we have 15 different incidents not just the 12 cases at first thought. I was in a state of shock. I didn't know where I was. Then, Mr. Evans made me explicitly explain how the results from the back injury caused me to feel suicidal. I told him I was going to jump off the Golden Gate Bridge. I was walking to the bridge when my ex-wife drove up in her car. She immediately took me to the psychological crisis unit at Marin General Hospital. I started crying and could not stop, while still on the stand. At line 18, p. 100, TR. 12/14/76, Mr. Evans asked me if I needed a recess. I had no one to be my advocate at this time. My brother helped

me off the stand. I had completely broken down. There was no doubt in anyone's mind that I needed an attorney and that I was incompetent to represent myself.

On page 104, I was asked if I had emotional problems and physical reasons relating to my back injury for being off work. I answered yes. Yet, this issue was not ruled on by the judge in his Finding and Award.

The next display of mental incompetence came forth on May 31, 1977, and is shown in that transcript on page 5, lines 20-27. The defense attorney, Mr. Berman, asked the judge why he let me serve a document when the chances were good that I wouldn't. The judge told him that I wasn't an attorney. Then, Mr. Berman said that's why I shouldn't be doing any service. This correctly implied that I was incompetent.

On page 12, line 8, of this same transcript, the judge asked Mr. Berman if he wanted me thrown in jail for my mis-service. The due process

question raised in the proceedings of May 31, 1977, became so intent that the judge left the court room to confer with the Presiding Judge. Then after returning, the judge stated in line 9 of page 15, that I had only myself to blame. I couldn't serve a simple little document after he had told me how to do it, and put into the record twice. This clearly evidenced my inability to represent myself and my incompetence. Then in lines 14-16 the judge asked me what to do with this psychiatric stuff, just put it in the back of the file like everything else?

At this point in the record I began to see that apparently he did not read the psychiatric medical reports concerning my mental illness. I was failing to do the proper requested things, and I was suffering constantly from my mental problems. I was lost.

On page 21, lines 14-26, <u>I requested that I be allowed to substitute an attorney for my in pro per representation</u>. The judge could not believe it. He repeated, "Cut yourself out?"

That makes sense, said the judge.

In the hearing of December 5, 1977, p.3, lines 4-13, displays an outburst in the judge that caused me to loose complete control of myself in attempting to represent myself. Before the trial, the judge had asked me why I didn't have the attorney that I said I would get at the hearing of May 31, 1977. I told him I was not able to find anyone who wanted eleven cases already in progress before the Compensation Board. The judge became very upset at me when I wrote a letter to the presiding judge. On line 18, the court indicated I had a contemptuous attitude. The court also stated that I was trying to go around him, and that was also contemptuous.

Next, the court and I started to battle with each other as to how the case was going to be presented. Page four, lines 14-26, the court said to Mr. LaVelle, "Will you let me run the case?" Lines 14, p.4, the court told me to sit down and just keep quiet until called upon. Then in line 25, the court says that

I am making a lifetime case, and I can't go on willy-nilly--. This is a prime example of how badly I needed an attorney and the court knew it, but the judge would not appoint me an attorney. Going on to page 8, line 22, the court said, "It is getting more complex all the time." The judge made a statement about how the appeals court will untangle the stuff in the case before him. I submit that here on p. 10, line 24, the judge again was very aware of how poorly I was doing, yet he still would not consider my incompetence to represent myself and appoint an attorney for me.

Mr. Miller, on p. 12, lines 6-26, and all of p. 13, requested the judge to dismiss him from representing me in WCAB Case 76 LA 403 651. He said that I refused to follow his advise and because of my mental state our lawyer/client relationship had gone to nothing. I didn't want him out. I had in fact been relying on him. I was taken back to find he, like the other attorneys and

lawyers, didn't want to represent me. I was taken by complete surprise when the judge permitted Mr. Miller to get off the case. I requested a recess. After the dismissal of the attorney, my presentation grew even more confusing.

Applicant's incompetence to represent himself and his desire and need to have an attorney, became abundantly clear when on TR. December 19, 1977, p.6, the judge and he got into a shouting match. In lines 19-22, the judge states that when he is talking to me I should keep quiet. When I talk, he will keep quiet. He wants me to make that deal with him.

"Don't try to outshout me, it won't work."

Then on p. 8, TR. 12/19/77, lines 11-26, I told the judge that I had been very sick, suffering from manic-depression. I indicated that I wasn't in my right mind. The court questioned me as to if I did not know what I was doing. I told him that I

honestly didn't know what I was doing. Next, the judge wanted to know if the court should appoint a GUARDIAN FOR--, I interrupted. I didn't answer his question about the guardian because I needed and wanted an attorney to be appointed by the court, not a guardian. When I tried to explain myself before the court, it was extremely difficult to try and explain that I felt mentally incompetent. It is very hard for any person who is sick to admit he is sick, much less try to diagnose himself. The conversation continued on to page 9, when the judge said:

> "I don't believe I have ever had a litigant come before me yet that claimed he was incompetent."

The Judge should have at this point, stopped the trial and appointed an attorney. If there is any suspicion of incompetence, as there was then presented, then the Judge should have conducted a full inquiry as to the applicant's mental state. He may have sent the applicant to a neutral psychiatrist. Further, defense attorney Mr. Berman, immediately

responded on p. 9, line 3, by stating that the trial should not proceed if there was a claim of incompetence and no medical report to support it.

Instead, the court ordered me to proceed with examination of Mr. Kaufman, from Trans World Airlines. As the examination moved forward, the Judge gave me more warnings about what he thought to be on my part of playing games with the states money. For example, on p. 16, lines 2-11, the Judge accused me of going off on some kind of kick. He said that he was going to limit me because it was costing so much money to conduct the hearings. Then, forgetting what I had just told him about being incompetent, he told me that I was excused. Further, that I had better get better prepared and put these questions for the witness into a better form so that the case could move on. I was having trouble keeping my mind together. Again on page 17, and through the a.m. session, the Judge mentally tore away

at me. I was so broken up I couldn't do anything right and the Judge screamed at me of how incompetent I was. Why didn't he stop it then?

On TR. 12/19/77, p.35,36, the judge told how I was redundant and repetitive. He said the court was not merely an umpire, but they are a participant. Yet, he still would not appoint me an attorney. Additionally, I'm told by the Judge on p. 37, lines 25-26, I'm irrelevant, immaterial and incompetent. The trial should have stopped.

Next, however, an adverse witness, Mr. Fred Marrow from the International Association of Machinists Union, District 142 was called to the stand. Before I examined him, I tried to introduce into evidence a copy of the Federal Employee's Liability Act. TR. 12/19/77 p.6, lines 10-16, shows that I thought I was under that act for my injuries. I was so incompetent that I didn't know what law covered my case before the Workers' Compensation Board.

The text is filled with many other incidents of incompetent actions. Another example is on p. 77, lines 5-20, where I informed the Judge that I had a dental splint in my mouth to curb stress. This made my spoken word hard to hear. In addition, I told him that I lose my train of thought and that I had trouble getting as far as I did.

It became so clear that I was incompetent to represent myself that the defendant's attorney, Mr. Harris, told the Court so. TR. 12/19/77, p.82, lines 4-6, he said:

> "I question the competency of Mr. LaVelle to proceed in his own capacity as his own lawyer."

On page 82, lines 10-13, Mr. Harris said:

> "I think we shouldn't go any further, considering the cost of both the state and to the defendants unless some determination is made of Mr. LaVelle's capacity to understand the issues that he has claimed."

The Judge's rejoinder was, see TR. 12/19/77 p.82, line 26, p.83, line 1:

> "Even the Supreme Court has now found that by going ahead by himself, if he wants to, is not denying due process."

But the fact is that I at no time told the Judge that I wanted to represent myself, and even if I had, I should have not been allowed to do so; precisely because I was incompetent.

What the Judge also failed to do was to inquire into the question of whether I was competent to represent myself or waive my right to have an attorney appointed for me. All I could think was that the Judge had threatened me and that I had only until 4:45 p.m. to complete my presentation.

The next witness was my ex-wife, who testified that I was in fact mentally ill and was unable to work from July 13, 1976. She testified that I was under psychological care and taking lithium carbonate to stabelize my episodes of manic-depressive bouts. Margaret LaVelle's testimony starts on page 100 of TR. 12/19/77. It evidences the fact that incompetency did exist at the time of these hearings.

She testified that I was unable to work due to my incompetence. On January 4, 1978, the Social Security Administration held a hearing to determine the disability of the applicant. At that hearing, Dr. Eisenberg testified to my inability to be gainfully employed, or to perform any substantial gainful activity because of my severe mental condition. Dr. Eisenberg testified that I was extremely depressed, anxious, and unable to function in any capacity. He further said that I could not take control of my daily life and responsibilities.

The Administrative Law Judge gave his decision on January 9, 1978, while the Workers' Compensation Appeals Board Hearing was still going on, but were in recess. He ruled that I was completely disabled From July 13, 1976 through the January 9, 1978 decision, and continuing. <u>If I had had an attorney, he would have seen to it that Dr. Eisenberg would have testified in the WCAB Hearings</u>.

The entire Transcript of Record is

being lodged as evidence of the fundamental injustice which took place before the Workers' Compensation Board in seven different hearings where I was not competent to represent myself, nor did the judge appoint an attorney to represent me. The court stated on one hand that the psychological problems were continuous, but then failed to rule on the psychophysiologic-musculo-skeletal reaction that Dr. Cowan found was the cause of my back complaints. Subsequently, however, Dr. Robert Hunt found there was permanent disability upon his complete examination on March 27, 1981. He said that I had a subluxation in my middle back. This report has been sent directly to the Liberty Mutual Insurance Company. The report is also the most germain, and complete physical examination of record and includes xrays to be issued in this case. Therefore, based on the above, my condition relating to my back injury was not just a psychological reaction to the injury, but indicates that the

physical injury was never absent from the applicant's permanent disability.

CONCLUSION

For the foregoing reasons the petition for Writ of Certiorari should be granted.

This the 20th day of April, 1981.

RESPECTFULLY SUBMITTED:

Wayne C LaVelle

WAYNE C. LA VELLE
45 Reed Blvd. #2
Mill Valley, California
94941
(415) 383-6079
PRO SE

April 20, 1981

APPENDIX A

COURT OF APPEAL

OF THE

STATE OF CALIFORNIA

Division Four

No. 49089
WCAB Case No. 75 LA
394 945

WAYNE C. LA VELLE,
Petitioner

v

WORKERS' COMPENSATION APPEALS BOARD,
STATE OF CALIFORNIA, et al
Respondents

BY THE COURT:

The "motion to add ommitted conclusion and prayer to petitioner's reply to respondent's answer to petion for review" is granted. The "motion to consolidate cases" is denied. The petition for a writ of review is denied.

Dated: Dec. 12, 1980

Winslow Christian, Acting P.J.

APPENDIX B

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JAN 21 1981

I have this day filed Order

HEARING DENIED

In re: 1 Civ. *No.* 49089

Lavelle

vs.

WCAB

Respectfully,

Clerk

72078-877 7-79 4M OSP

APPENDIX C

WORKERS' COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE
Applicant

v

TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY
Defendants

Case No.
75 LA 394 945

FINDINGS AND AWARD

Wayne C. LaVelle, Applicant
(in propria persona)

Kendig, Stockwell and Gleason
by Steven Harris

Attorneys for Liberty Mutual Insurance Company

****

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted, the Honorable JESSE E. FLUHARTY, Workers' Compensation Judge, now finds, award, and orders as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a ramp serviceman

at Los Angeles, CA on December 31, 1974 by Trans World Airlines whose insurance carrier on said date was Liberty Mutual Insurance Company, when he sustained an injury arising out of and occurring in the course of his employment to his back.

2. Some medical treatment was furnished by the carrier.

3. Applicant's earnings were maximum for both temporary and permanent disability, (119.-$70.00).

4. This injury caused temporary total disability for the period February 27, 1975 to April 16, 1975, for which indemnity is payable at the rate of $119.00 per week, less credit to defendants in the sum of $1,020.00 paid on account thereof.

5. This injury caused no permanent disability.

6. Further medical treatment to cure or relieve from the effects of this injury is not required.

7. Applicant did not incur expenses for self procured medical treatment.

AWARDS

AWARD IS MADE in favor of WAYNE LA VELLE against LIBERTY MUTUAL INSURANCE CO. of temporary disability indemnity in accordance with Finding 4 hereinabove.

EXECUTED:
JUN 28 1979
Served by mail

JESSE E. FLUHARTY
WORKERS' COMPENSATION
JUDGE

APPENDIX D

CASE NO. 75 LA 394-945

WAYNE LAVELLE vs TRANS WORLD AIRLINES:
LIBERTY MUTUAL INSURANCE CO.

DATE of Injury: Dec. 31, 1974

Workers' Compensation Judge: Jesse E. Fluharty
Dated: June 28, 1979

OPINION ON DECISION

This is one of a series of cases. Opinion and Decisions have issued in seven of the cases; two to the hands, five to the knees. This case is concerned with the back.

Reference is made to the Minutes of Hearing of December 13, 1976.

Need For Treatment

According to Dr. John F. Cowan, M.D. in his July 7, 1975 report indicates that he is not in need of any specific treatment. Consequently none will be allowed.

LIABILITY FOR SELF PROCURED MEDICAL TREATMENT

No bills were presented. Consequently no self procured medical treatment will be allowed.

TEMPORARY DISABILITY

Temporary disability has been paid in the amount of $1,020.00. Although an accounting by the carrier was to be submitted, this has not been done. However, the applicant testified (lines

12-14, pg. 5 of the December 14, 1976, Summary of Evidence) that he was off work from February 27, 1975 to April 16, 1975:

"Returned to work: On December 1975 he returned to work, which would indicate he was off work from 2/27/75 to and including December 1975. He explained, however, that he was fired by TWA on 4/16/75; had a letter of discharge. This would indicate he was off work 2/27/75 to 4/16/75 because he was in pain, which was in his back."

There being no contrary evidence, temporary disability will be allowed for this period subject to credit of $1,020.

PERMANENT DISABILITY

According to Dr. John Cowan there was no permanent disability. He states as follows: "His case is stationary, but there are no factors to be rated.." It should be noted that there is considerable evidence to the fact that his wife Marguerite exacerbated his condition when she kicked him. See the report of Paul Goodley, M.D. of March 1, 1975:

"(Mrs. LaVelle reported) that she and Wayne had been in good spirits and that he was doing well, but that while he was kneeling and bending forward she inadvertently injured him by apparently kicking him 'below the tail bone'. She stated that he had fallen onto the floor of the living room, complaining of pain all over his back 'from the top to the bottom'. She stated that he had been on the floor for approximately one hour while she had attempted to reach my (sic) by long-distance, and it did take some persuasion before she told me the cause of the accident."

In view of this evidence the court is of the opinion that any residuals applicant might have or to which he might complain could be allocated to the "horseplay" between him and his wife.

In view of the fact that no permanent disability has been found, obviously the issue of apportionment is moot.

Jesse E. Fluharty
WORKERS' COMPENSATION JUDGE

JEF:ch

APPENDIX E

CASE NO. 75 LA 394 945

WAYNE C. LA VELLE V TRANS WORLD AIR LINES
LIBERTY MUTUAL
INSURANCE COMPANY

Workers' Compensation Judge: JESSE E. FLUHARTY

Dated: Aug. 3, 1979

REPORT OF WORKERS' COMPENSATION JUDGE ON
PETITION FOR RECONSIDERATION

I
INTRODUCTION

Applicant, Wayne C. LaVelle, by occupation a ramp serviceman, age 28 on date of injury, Dec 31, 1974, sustained injury arising out of and occurring in the course of his employment to his back, when he was bending and lifting as a ramp serviceman by Trans World Airlines.

Decision complained of is a findings of fact and conclusion of law and award issued by this court on June 28, 1979, and more specifically that portion thereof wherein it was found that there was no permanent disability;

Petitioner herein is applicant himself. The petition has been verified by the applicant has been made on the form supplied by the Board, consequently is legally effective. Dec sion issued Jun 28, 1979. Petition for Reconsideration was filed Jul 23, 1979 within the 25 day period, consequently it seems to be timely.

The court examined the file carefully for evidence with respect to this injury and medical reports with respect to this injury and set them forth in the Opinion on Decision which is set forth below in haec verba.

PERMANENT DISABILITY

"According to Dr. John Cowan there was no permanent disability. He stated as follows:

> His case is stationary, but there are no factors to be rated.

"It should be noted that there is considerable evidence to the fact that his wife Marguerite exacerbated his condition when she kicked him. See the report of Paul Goodley, M.D. of March 1, 1975.

> (Mrs. LaVelle reported) that she and Wayne had been in good spirits and that he was doing well, but that while he was kneeling and bending forward she inadvertently injured him by apparently kicking him "below the tail bone." She stated that he had fallen onto the floor of the living room, complaining of pain all over his back "from the top to the bottom." She stated that he had been on the floor for approximately one hour while she had attempted to reach my (sic) by long distance, and it did take some persuasion before she told me the cause of the accident.

"In view of this evidence the court is of the opinion that any residuals applicant might have or to which he might complain could be allocated to the "horseplay" between him and his wife.

"In view of the above no permanent disability will be found.

II

DISCUSSION

Applicant is referring to medical reports in connection with other claimed incidents which are subject to litigation in connection with other cases.

As has been pointed out in the Opinion on Decision herein this is one of a series of cases, there being 12 in number. Most of the cases are concerned with a psychiatric claim and which will be decided at a later date. Applicant is attempting to confuse the issue by bringing in medical evidence in connection with the psychiatric case and introducing it into this record thereby confusing the results.

The court has carefully extracted from the record that material applying to the back and is of the opinion that there is no back disability as such.

III

RECOMMENDATION

It is therefore respectfully recommended that the Petition for Reconsideration lack merit and should be denied.

JESSE E. FLUHARTY
WORKERS' COMPENSATION
JUDGE

JEF:ch

Served by mail Aug 3, 1979

on:

Wayne LaVelle
Kendig, Stockwell, Gleason
Lien Services
Martin Blinder, M.D.
Gordon, Holstein, Ropers
Steven Novam, M.D.

APPENDIX F

WORKERS' COMPENSATION APPEALS BOARD
State of California

WAYNE LA VELLE Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE Defendants	Case No. 75 LA 394945 ORDER DENYING RECONSIDERATION

We have considered the allegation of applicant's Petition for Reconsideration and the report of the Workers' Compensation Judge with respect thereto. We have also considered applicant's Supplemental Petition for Reconsideration filed Sep 6, 1979. Based on our review of the entire record, a review of the authorities cited by applicant, and the report and recommendation of the worker's compensation judge which we adopt and incorporate, we deny applicant's Petition for Reconsideration.

IT IS ORDERED that applicant's Petition for Reconsideration, including the Supplemental Petition for Reconsideration be, and is hereby, DENIED.

WORKERS' COMPENSATION
APPEALS BOARD

I CONCUR.

CONCURRING BUT NOT SIGNING

DATED AND FILED AT SAN FRANCISCO CA

SEP 14, 1979

SERVICE BY MAIL ON SAID DATE TO ALL
PARTIES LISTED ON THE OFFICIAL ADDRESS
RECORD

APPENDIX G

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

FOURTEENTH AMENDMENT, SECTION 1 of the CONSTITUTION OF THE UNITED STATES

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. So State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C. §1257 (3) STATE COURTS; APPEAL; CERTIORARI

Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a statute of the United

States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.
June 25, 1948, c. 646, 62 Stat. 929.

CALIFORNIA CONSTITUTION, ARTICLE 1
SECTION 13

Sec. 13. In criminal prosecutions, in

any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; but in any criminal case, whether the defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel, and may be considered by the court or the jury. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide when there is reason to believe that the witness, from inability or other cause, will not attend at the trial. (Amended Nov. 6, 1934)